

EXPLANATORY MEMORANDUM TO
THE COUNCIL TAX (VALUATIONS, ALTERATION OF LISTS AND
APPEALS) (ENGLAND) REGULATIONS 2008
2008 No. 315

and

THE COUNCIL TAX (ELECTRONIC COMMUNICATIONS) (ENGLAND)
ORDER 2008
2008 No. 316

1. This explanatory memorandum has been prepared by the Department for Communities and Local Government (“Communities”) and is laid before Parliament by Command of Her Majesty.

2. Description

2.1 The Council Tax (Valuations, Alteration of Lists and Appeals) (England) Regulations 2008 (“the 2008 Regulations”) amend the Council Tax (Alteration of Lists and Appeals) Regulations 1993 (S.I. 1993/290) (“the 1993 Regulations”). The amendments enable a person who put forward a proposal to a listing officer for the alteration of a valuation list in England (“the proposer”), or another person with an interest in the property to which the proposal relates, to appeal against the listing officer’s decision directly to a valuation tribunal. The 2008 Regulations also make some amendments to the Council Tax (Situation and Valuation of Dwellings) Regulations 1992 (S.I. 1992/550) (“the 1992 Regulations”) regarding the date when certain types of property are to be valued for the purposes of council tax on the basis of size, layout, character and the physical state of the locality.

2.2 The Council Tax (Electronic Communications) (England) Order 2008 also amends the 1993 Regulations. It enables notices, given in accordance with the 1993 Regulations, to be sent electronically.

3. Matters of special interest to the Joint Committee on Statutory Instruments

3.1 None

4. Legislative Background

4.1 Part 1 of the Local Government Act 1992 (“the 1992 Act”) contains the legislative framework for the levy and collection of council tax by specified local authorities (billing authorities). Chapter II of that Part enables valuations of dwellings to be carried out for the purposes of council tax and requires listing officers for each billing authority to compile and maintain lists of the valuations. Different valuation bands (set out in section 5 of the 1992 Act) are used to determine the amounts of council tax payable in respect of dwellings of different values. Valuation tribunals

exercise jurisdiction, conferred on them by provisions in the 1993 Regulations, in relation to appeals about alterations of valuation lists.

4.2 The 1992 Regulations relate to properties that are dwellings for council tax purposes, as defined in section 3 of the 1992 Act, and set out the basis of valuation of these dwellings for the purposes of valuation lists required to be compiled and maintained under the 1992 Act. The 2008 Regulations make amendments to the 1992 Regulations to deal with an unintended effect of an amendment made to regulation 14 of the 1993 Regulations by the Council Tax and Non-Domestic Rating (Amendment) (England) Regulations 2006 (S.I. 2006/3395) (see paragraph 7.1 below).

4.3 The 1993 Regulations provide for the alteration of council tax valuation lists. They also provide for appeals to valuation tribunals where there is a disagreement about an alteration between a listing officer and another person making a proposal for the alteration of a list. The 2008 Regulations amend the 1993 Regulations to enable an appeal in relation to the alteration of a valuation list to be made directly to the clerk of a valuation tribunal rather than, as at present, disagreements being referred to the valuation tribunal by the listing officer (see paragraph 7.2 below).

4.4 As a consequential amendment following the Civil Partnership Act 2004, the 2008 Regulations amend regulation 23 of the 1993 Regulations so that a person is disqualified from participating as a member, or acting as clerk or officer, of a tribunal, in relation to an appeal, if the appellant is that person's civil partner.

4.5 As employees of valuation tribunals became employees of the Valuation Tribunal Service in 2004 by virtue of a transfer scheme made under the Local Government Act 2003, the 2008 Regulations amend regulations 17 and 24 of the 1993 Regulations to revoke references to employees of valuation tribunals. The amendments to regulation 24 also prevent an employee or member of the Valuation Tribunal Service being a representative of a party to an appeal.

4.6 The 2008 Regulations amend regulation 35 of the 1993 Regulations, which deals with service of notices, to make clear when a notice is treated as having been served. These provisions are based on rule 6.7 of the Civil Procedure Rules (deemed service), which apply to proceedings in county courts, the High Court and the Civil Division of the Court of Appeal.

4.7 The Council Tax (Electronic Communications) (England) Order 2008 also amends regulation 35 of the 1993 Regulations so that notices can be served electronically. Regulation 35(5)(a) of the 1993 Regulations provides that any reference to a notice includes a reference to a proposal and any other document required or authorised to be served. These amendments are made by virtue of a power to make an order so cannot be included in the 2008 Regulations.

4.8 Schedule 11 to the Local Government and Finance Act 1988, which contains some of the powers under which the 2008 Regulations are made, is to be amended, on a date to be appointed, by the Local Government and Public Involvement in Health Act 2007 (c. 28), but there is no intention for these amendments to be made before the 2008 Regulations come into force.

5. Territorial Extent and Application

5.1 Both these instruments apply to England.

6. European Convention on Human Rights

6.1 As both the instruments are subject to negative resolution procedure and do not amend primary legislation, no statement is required.

7. Policy background

7.1 Valuation of Dwellings (regulation 2 of the 2008 Regulations)

7.1.1 The Secretary of State's aim in amending the Council Tax (Situation and Valuation of Dwellings) Regulations 1992 is to correct a small anomaly created by the amendments made to regulation 14 of the 1993 Regulations by the Council Tax and Non-Domestic Rating (Amendment) (England) Regulations 2006 ("the 2006 Regulations") on 1st April 2007. Regulation 14 makes provision for the day from which an alteration to the valuation list has effect.

7.1.2 Where a property has been improved and sold or where a separate unit of living accommodation is created within a single property, the amendments made by the 2006 Regulations have the unintended consequence of requiring a listing officer to value the property on the basis of its size, layout, character and the physical state of the locality at the date the valuation list is altered (which is when the alteration to the list has effect as a result of the amendments made to regulation 14). That is out of line with the original policy intention that the listing officer should value the property in these circumstances on the basis of its size, layout, character and the physical state of the locality at the date of sale or the date on which the separate unit of living accommodation came into existence (which is when the alteration to the list had effect before regulation 14 was amended).

7.1.3 Usually there will be no change in the size, layout or character of the dwelling or the physical state of the locality between the date an improved property is sold or a separate unit of living accommodation comes into existence and the date the list is altered. There may however be some occasions, where for example the listing officer has not been notified promptly that a property has been improved and sold, that a further improvement to the property is made subsequent to the sale, but before the valuation list is altered.

7.1.4 In these instances it is possible, without the amendments made by the 2008 Regulations, that a property could be placed in a higher band for council tax purposes than if the list had been amended expeditiously. That potentially means that some householders might have to pay more council tax than others in an otherwise identical position. It also runs counter to Communities' policy intention that improvements to properties should only be taken into account for valuation purposes when those properties are sold.

7.1.5 The amendments made by the 2008 Regulations restore the position that applied prior to the 2006 Regulations coming into force. They ensure that improvements made to properties after any sale or after the date on which a separate unit of accommodation comes into existence are not taken into account for council tax valuation purposes.

7.2 Appeals Direct for council tax (regulations 3 to 10 and 12 to 14 of the 2008 Regulations)

7.2.1 The Secretary of State's aim in amending the Council Tax (Alteration of Lists and Appeals) Regulations 1993 ("the 1993 Regulations") is to introduce an Appeals Direct system for council tax (that is, a system where a person can appeal directly to a valuation tribunal against a listing officer's decision) and stems from a wish to provide an appeals process that will benefit and provide clarity for the council tax payer and others with an interest in the property in question.

7.2.2 In December 2004 the Office of the Deputy Prime Minister (Communities' predecessor) asked the Valuation Tribunal Service ("the VTS") for advice on a number of issues affecting valuation tribunals and their members, including the methods by which appeals reach valuation tribunals. The VTS was established in April 2004 under provisions in the Local Government Act 2003; one of its functions under that Act is to provide advice to the Secretary of State (section 105(3)).

7.2.3 The VTS subsequently (and following its own public consultation in the first half of 2005) provided advice to the Secretary of State in July 2005 that included a recommendation for the introduction of an Appeals Direct system for council tax banding appeals.

7.2.4 A number of concerns, related to the existing system for proposals to alter valuation lists for council tax and subsequent appeals, as set out in the 1993 Regulations, became clear. Firstly the existing system for the handling of proposals to alter the valuation list and appeals was incompatible with best practice for the handling of appeals against the decisions of public bodies in that currently the listing officer, whose decision is being challenged, sends appeals to the valuation tribunal. Secondly there was scope for confusion in taxpayers' minds between the role of the Valuation Office Agency ("the VOA") including its listing officers and the role of the valuation tribunals and the VTS. Thirdly taxpayers could find themselves in a judicial arena, without having made an express decision to do so and often without their realising, because of the regulatory requirement placed on listing officers to refer unresolved proposals as appeals (after 6 months) to the valuation tribunal. Additionally the current system placed an undue administrative burden on the valuation tribunals and the VTS mainly due to the need for them to handle as appeals all proposals unresolved after 6 months, and make arrangements for tribunal hearings for a large number of cases which were later resolved through negotiation before the appeal hearing could take place.

7.2.5 In December 2006 Communities issued a consultation paper “Valuation Tribunals – Appeals Direct for council tax” which sought views on proposals to introduce a clearer, more customer friendly and more efficient system for the handling by the VOA and the valuation tribunals of appeals against council tax bandings in England. The proposals for Appeals Direct for council tax were:

- To clearly separate the steps between querying the council tax banding of a domestic property with the relevant body, the VOA, and lodging an appeal against the banding with the valuation tribunals;
- Introducing Appeals Direct as a method for clearly distinguishing the roles of the VOA on the one hand and valuation tribunals on the other hand;
- To set in legislation a maximum period of 4 months for the VOA’s listing officer to make a decision following a formal query (a proposal);
- To set in legislation a maximum period of 2 months for appellants, following a decision from the listing officer, to appeal that decision directly with the relevant valuation tribunal;
- For that appeal to be initiated with a summary explanation from the appellant as to why the listing officer’s decision is being disputed.

7.2.6 Communities published a summary of responses and its conclusions following the consultation in May 2007. It received 51 responses to the consultation. A majority of respondents were in favour of the proposals and Communities decided to proceed to introduce the Appeals Direct system through amendments to secondary legislation with one change from the proposals on which it had consulted. The period for lodging an appeal was extended from 2 to 3 months to reflect concerns expressed.

7.2.7 As part of the consultation in December 2006, Communities consulted the Council on Tribunals in accordance with section 8 of the Tribunals and Inquiries Act 1992. In November 2007 the Council on Tribunals was replaced by the Administrative Justice and Tribunals Council, which Communities also consulted in January 2008 in accordance with section 8. The Council was content with the procedures for tribunals contained in the 2008 Regulations.

7.2.8 The Appeals Direct system for council tax banding appeals will allow appeals to be made directly to a valuation tribunal. It will draw a clear distinction between the VOA and the valuation tribunals by separating their roles in dealing with enquiries and disputes about council tax banding. The VOA will take a more pro-active, time limited approach to handling proposals to alter the valuation list that will lead to clear decisions for the proposer and other interested parties. The proposer will benefit from greater clarity of procedure and greater speed in the handling of cases through simplified procedures and a reduction in overall administration.

7.2.9 Where a listing officer is of the opinion that a proposal has not been validly made and serves an invalidity notice on the proposer, it will be possible to appeal against the invalidity notice (within 4 weeks, as is currently the case) directly to the valuation tribunal. Following review of a proposal for alteration of a valuation list, the VOA listing officer will issue a formal decision notice which will set out the particulars of the decision made or any agreement that has been reached. Unless the decision is in accordance with the proposal or an agreement has been reached, the proposer will then have an opportunity to consider that decision and decide either to accept the conclusion reached by the listing officer or to submit an appeal to challenge the listing officer's decision at a valuation tribunal hearing. Any appeal will be made directly to the valuation tribunal within 3 months of the decision notice.

7.2.10 A key improvement under the Appeals Direct system is that only those cases requiring formal dispute resolution procedures before a tribunal need become formal appeals to the valuation tribunal. This is a change from the existing regulations under which the listing officer has to refer a disagreement as an appeal within 6 months, and the proposer and other interested persons become parties to the appeal without specifically choosing to do so.

7.2.11 The 2008 Regulations make amendments to the 1993 Regulations to require the listing officer to make a decision or to reach an agreement with the proposer within 4 months. An agreement is for the alteration of the list in terms different from those in the proposal. There cannot be an appeal where such an agreement is reached. Agreements are between the listing officer and the proposer but there is nothing to stop a taxpayer or other interested person putting forward their views to the listing officer before a decision is made or an agreement is reached with the proposer. If the listing officer decides to alter the valuation list in accordance with either the proposal or an agreement reached with the proposer, a taxpayer or other interested person who is not content with the decision or agreement may make a new proposal (where competent to do so).

7.2.12 Where there is a disagreement between the listing officer and the proposer (that is, the listing officer's decision is not in accordance with the proposal and no agreement has been reached), in addition to the proposer being able to appeal, a person who would have been competent to make a proposal at the date of the decision may choose to appeal (whether or not the proposer appeals) without having first to submit a separate proposal. On doing so, such a person becomes a "competent appellant". A competent appellant's appeal will only proceed if the proposer does not appeal and no other competent appellant has already appealed.

7.2.13 The amendments made by the 2008 Regulations also provide for an interested person to become a "competent party", that is, someone who would have been competent to make the proposal and wishes to be a party to any appeal against the listing officer's decision, without making an appeal. Also, by becoming a competent party the person may, like a competent appellant, in the circumstances set out in new regulation 19A of the 1993 Regulations, be able to proceed with an appeal if the appellant's appeal is withdrawn.

7.2.14 A new regulation 18E enables the listing officer and other parties to an appeal to reach an agreement, on the alteration of the list, after an appeal has been made but before it is considered by the valuation tribunal. Where an agreement is reached the appeal is withdrawn. This gives a further opportunity for a disagreement to be resolved before an appeal is determined. Those who have chosen to be parties to the appeal can be parties to the agreement.

7.2.15 The VOA and the VTS will be using the period before these Regulations come into force to train their staff in the new processes and to publicise the new arrangements. Where people submit proposals to alter the list after Appeals Direct comes into force, the VOA will advise them of the new arrangements. The VTS will provide advice on the new arrangements for appeals. Communities will amend its own guidance on council tax to take account of the new Appeals Direct system for council tax.

7.2.16 A copy of Communities' consultation paper "Valuation Tribunals – Appeals Direct for council tax", a summary of the responses to that consultation and Communities' Conclusions following the consultation can be found on Communities' website at the following address:

<http://www.communities.gov.uk/publications/localgovernment/valuationtribunalsconsultation>

7.2.17 A copy of the Valuation Tribunal Service's advice to the Secretary of State on Appeals Direct is included in its Strategy Planning paper published in July 2005 and is available on their website at the following address:

<http://www.valuation-tribunals.gov.uk/consultation-papers/index.html>

7.3 Other amendments (regulations 11 and 15 to 17)

7.3.1 The amendments made to the 1993 Regulations by regulations 11 and 16 of the 2008 Regulations are made as a consequence of the creation of the Valuation Tribunal Service and, in particular, the fact that valuation tribunals no longer have employees. Regulation 15 of the 2008 Regulations makes a consequential amendment in the light of the Civil Partnership Act 2004.

7.3.2 Regulation 35 of the 1993 Regulations deals with service of notices. Regulation 17 of the 2008 Regulations amends regulation 35 to make clear when a notice is treated as having been served.

7.4 Electronic communications

7.4.1 The amendments made to regulation 35 of the 1993 Regulations by the Council Tax (Electronic Communications) (England) Order 2008 will allow those submitting proposals and appeals to submit them electronically should they so wish. The Order also amends regulation 35 to make clear when a notice is treated as having been served where it is served electronically.

8. Impact

8.1 A Regulatory Impact Assessment has not been prepared for these instruments as they have no impact on business, charities or voluntary bodies.

8.2 There is no impact on the public sector.

9. Contact

9.1 Wendy McGregor at the Department for Communities and Local Government tel: 020 7944 5079 or email: wendy.mcgregor@communities.gsi.gov.uk can answer any queries regarding these instruments.